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URBAN HOMESTEADING: ONCE MORE DOWN THE YELLOW BRICK ROAD

*By M. Jan Akre**

I. INTRODUCTION

Confronted with ominous statistics on crime, social welfare costs,¹ and health hazards attributable to urban concentrations of pollution,² Americans have questioned the vitality of the urban environment.³ Recognizing the need for a response to these problems and for a program to retain cities as a national wellspring of cultural and social stability,⁴ Congress has enacted several massive federal programs to curtail housing decay through code enforcement, housing subsidies and financing, demolition and slum clearance. These approaches have had mixed success, but continue as the major national effort toward reclaiming metropolitan areas by arresting and reversing the process of urban decay.

Although these federal programs have often overpowered state and municipal urban planning efforts, their lack of convincing success has forced local governments to devise their own methods of treating the urban housing problem. One such municipal program, homesteading, has been hailed as a potentially formidable tool in the eradication of urban blight.⁵ Essentially, under this program a municipality may grant to qualified applicants a conditional deed to abandoned urban property over which the municipality has acquired title. In return these applicant homesteaders agree to rehabilitate and reside in the housing parcel for a specified time period. Upon completion of this requirement, the city deeds the property absolutely to the homesteader. As a supplement to existing federal programs, this simple idea of giving away abandoned inner-city housing to willing rehabilitators may be a noteworthy step in furthering the national objectives of maintaining healthy cities. Accordingly, this article presents the accomplishments and failures of federal efforts at urban renewal and examines in that context the homesteading program as an effective solution to the national environmental problem of deteriorating urban housing.

A three part presentation is used including: (1) a modular analysis of the urban problem; (2) an overview of related federal legislation; and (3) a study of homesteading ordinances themselves. The models presented in this article explain the process of urban dynamics and provide a basic tool for understanding the development of cities. Next, the article considers the effectiveness of federal legislation in attaining national urban rehabilitation goals. Federal legislation provides a necessary reference base for municipal homesteading ordinances because of the facility of legislative comparison and the present financial dependence of municipal programs on federal enactments. Finally, the mechanics of homesteading ordinances as passed by the city councils of Boston, Philadelphia and Wilmington are presented and analyzed.⁶ In considering these homesteading proposals, the reader is cautioned that their implementation is at present erratic due to the political structure of city government,⁷ ease of amendment,⁸ and conflict with state legislation.⁹

II. MODELS OF URBAN DYNAMICS

Economically, housing rehabilitation through homesteading presents a long-term solution to urban environmental problems only if it utilizes resources more efficiently than alternative proposals. This determination of efficiency depends on the effectiveness of urban resource allocation in terms of municipal budgeting and environmental costs. The use of urban models is particularly helpful in this respect. Although models of urban dynamics normally measure the traditional, budgetary costs of urban activity, the environmental cost of housing deterioration can be included by studying trends in the quality of housing. The assumption must be made that an economically healthy city will provide resource support, normally through a stable tax base, for expanded urban environmental rehabilitation. In order to project the long-term effect of any urban activity, for example homesteading legislation, on the city's stock of housing, the policy maker may use modular analysis to comprehend the interaction of urban pressures over a specific time period. Thus, the use of models of urban development may yield both an understanding of the economic and historical perspective in which homesteading programs must be viewed and a set of practical tools for measuring and projecting traditional and environmental costs of homesteading in light of present funding programs.

Although the complexity of urban development has spawned several noteworthy models, the nature of urban rehabilitation programs can be adequately explained through the two simple models

presented herein. The "trickle-down" model most accurately represents the historical reality of urban development and subsequent decay.¹⁰ The "self-contained ring" model enables the projection of a possible future of the city with the homesteading modification as a central element.

A. *Trickle-down Model*

Analysts of the urban environment have generally adopted the stage process or trickle-down model of urban development to explain housing life in successive stages of building existence, long-range stagnation, decay, and, finally, abandonment.¹¹ During the growth of the major Eastern cities, early capitalists built large, single-family dwellings for themselves, and durable multi-family tenements for industrial laborers newly arrived to the central city. As the city expanded outward, concentric rings of housing (suburbs) grew out from the city center. Naturally, the builders and occupants of this new and better housing were those with the wealth to relocate. Their former housing, single-family or tenement, had aged slightly in this expansion process, but was readily marketable, so it trickled down to the next lower economic class.¹² As the city continued to expand, greater quantities of aged housing eventually glutted the marketplace, depressing the price to levels attractive to even the lowest economic class. However, time and the succession of owners had severely reduced the quality of this early central city housing.¹³

Throughout the early stages of urban development, the snowball effect of housing turnover had been partially mitigated by thinning forces concomitant with the city's growth: demolition for transportation systems or for public and private high rise developments; fire; or other natural disaster. However, these thinning forces have proved unable to keep pace with the inexorable trickle-down process. Removal of housing waste has lagged during the long term development of the city because of the natural geometric progression of housing deterioration, the moratoriums on above ground urban transit, the disinvestment in private high rise and commercial developments, and the general inefficiency of municipal housing codes. Existing federal funding programs have heretofore focused on slowing the trickle-down process by financing code enforcement and homeowner acquisition and repair programs. They have also concentrated on removing urban housing waste by demolition of unsound structures. However, neither these programs nor normal thinning forces have kept pace with the need of cities to replace deteriorated housing with structures capable of meeting existing

demands for quality housing units.

Because the trickle-down model projects that the decay of urban housing is inevitable and continuous, we can deduce that these federal approaches, although apparently ineffective, have been properly directed, at least insofar as they supplement natural thinning forces by removing some poor quality housing. Thus, advocates of any specific program attempting to cure urban blight must realize the breadth of the problem, but must also focus on the advances already made by the existing supportive federal programs.

The trickle-down theory not only explains the historical causes of the prevalence of aged urban housing, but also provides a basis for projecting some expected results of homesteading programs in terms of cost analysis. Most cities today house a disproportionate share of the aged, sick and poor and must allocate an inordinate percentage of their budgets to normally ancillary city welfare services, e.g., fire, ambulance, and police protection. Yet cities may also profit from economies of scale by consolidating resources to provide better fundamental services, for example in health and medicine.¹⁴ The problem for urban planners is to maintain the relatively high efficiency of resource allocation in fundamental city services, and to improve the stock of city housing, or at least slow its deterioration. Thus, the percentage of municipal funds invariably allocated to housing areas at the low end of the trickle to deal with crime, fire and health expenses could be reduced. Current federal programs, which will be examined below, proceed on this cost reduction premise. For example, code enforcement programs attempt to attain higher levels of housing quality, thereby stretching the useful life of existing housing, and postponing the inevitable increase in welfare and replacement costs. Similarly, municipal governments realize that any urban activity which can slow the trickle-down process cuts municipal costs by maintaining a better stock of housing. Thus, a homestead program promises a cost reduction not only for municipal services, but also for demolition and replacement expenses to the extent these are borne by local government.

Further, municipal costs analysts advocating homesteading expect both a long-term cost reduction and a positive budgetary gain when homesteaders themselves infuse capital and labor back into the inner city, a process which will broaden the tax and human resource base.

The environmental costs of urban housing deterioration have been catalogued extensively in social and environmental publications and substantially reduce the quality of life for the city dweller.

Generally, the loss of taxes and human resources under existing conditions vitiates any concerted urban action premised on a strong financial commitment to reduce urban physical pollution. Socially, erosion of the stable urban housing tax base produces a downward spiraling effect on the urban quality of life by limiting funds for protective services, positive social welfare and recreation programs. More importantly, urban blight generates a pathological environment causing unemployment, racial tension, crime, fire, and the waste of human resources.¹⁵ Finally, these environmental costs encourage the middle class flight to the suburbs. This speeds the turnover of residential property, hastens abandonment and loads additional costs on those too old, sick or poor to flee.

B. *Self-contained Ring Model*

As an alternative theory of urban growth, this model expands on the historical process whereby urban housing has collected around an industrial activity and projects self-contained rings of mini-urban developments broadly spaced around future vital economic functions, the urban rings being connected by sophisticated transportation systems. This projection of cities has been criticized as unsupported by data¹⁶ and aesthetically unpleasant,¹⁷ but the model is noteworthy because an effective homesteading program may prove to be a transitional element in the development of this now conceptual city, if combined with an effective land-use planning policy. Essentially, the three-step process of conversion from the existing expanding rings to self-contained rings involves: (1) identification and segregation of various industrial and economic functions into tightly zoned areas of a region, probably with some overlap of existing cities; (2) residential and commercial zoning on a population density basis in a ring around the economic function (which conforms to the historical process of urban development); and (3) low density and open space zoning between population centers.

The presence of large capital investments in commercial buildings in every major American city assures their position as a vital economic center. However, there has been a shift in the urban economic structure to increasingly high income, white collar and professional activities. Meanwhile, this shift has been counterbalanced by the relocation of major industry to the suburbs where land has been more plentiful. Focusing on this phenomenon, the task of urban planners, primarily on a regional level, would be to develop new population centers in outlying areas while disposing of outdated

housing in the old industrial central city. Homesteading seems particularly well suited to solving, at least partially, the inner city housing problem, especially where coupled with an open-space or low density housing policy. Planners could rely upon a marketplace force, i.e., the free selection of homesteaders, to identify those structures worth salvaging in a particular neighborhood. Once the selection process was completed and homesteading allocations made, the unsalvageable property could be razed and replaced by either park space or new housing within the predefined population density limits.

On a broad environmental level, open space planning and the reduction of population density would have obvious physical benefits. Moreover, just as environmental benefits flow from the creation of pockets of economic resurgence within the city, the attraction of homesteaders into low density urban areas would revive the broad class neighborhood concept. Thus, when co-ordinated with a broad regional urban plan and extensive razing of unsalvageable property, the homestead-urban ring model presents an attractive solution to urban decay, while maintaining a market for rehabilitated resource property.

III. HISTORICAL APPROACHES

Homesteading advocates conscious of the modular dynamics of inner city development must also be aware of the merits of previous attempts to improve the quality of urban housing stock in order to defend legitimate funding efforts from the current disfavor with which "housing programs" generally are viewed.¹⁸ Although an exhaustive presentation of all applicable urban rehabilitation efforts is beyond the scope of this article, selected legislative and community efforts illustrate the hazards of any urban renewal activity.

A. *Demolition*

The Housing and Urban Development Act of 1965 added Section 116 to the Housing Act of 1949 as an urban renewal program providing for the demolition and clearance of structures found to be unsound according to local building regulations.¹⁹ Under the program, the federal government grants up to two-thirds of the cost of demolishing structures which the local governing body has determined to be dangerous to life and health under state and local law.²⁰ To become eligible for these federal funds, local governments must certify the exhaustion of other available legal procedures to secure remedial action by the owners of the structures involved. This re-

quirement insures that cities faced with a severe housing shortage caused by an excess of demand over housing supply do not remove possibly salvageable housing units from the market too quickly, thereby aggravating the shortage and raising prices. In short, this requirement reflects a policy decision that even marginal housing units in clear violation of local health and safety codes should remain in use to forego a displacement of low-end housing occupants into better quality and, hence, more expensive housing. Interestingly, in the short term this may save welfare costs by reducing total family budget outlays, but in the long term the better solution is to encourage the building of better housing. This would effect an increase in the overall supply of housing to meet demand, correct the chronic housing shortage faced by many cities, and drive down occupancy costs.

Considering the fact that that even a condemned building will be occupied if shortages and prices so dictate, a demolition program may have the negative effect of removing existing structures with some utility, but at some point local governments must balance the impact of a housing shortage against health and safety hazards and decree the demolition of certain buildings. This process of demolition has been the traditional governmental approach to the eradication of slum housing.²¹ Further, the program performs the function of maintaining urban vitality by removing housing waste. This conforms to a modular analysis of the eventual breakdown of all housing activity to the stage of non-utility.

Despite the appeal of this direct approach, administrative entanglements and a mixed reaction of the local citizenry have severely retarded the program. Initial attempts by neighborhood citizens to designate particular buildings as demolition candidates may be frustrated by the requirement of the exhaustion of all legal procedures to induce rehabilitative measures before demolition of the building. Thus, a recalcitrant owner unwilling to lose his building entirely can initiate short-term rehabilitative measures in marginal buildings or employ the time-consuming administrative appeal system to protest the condemnation of his building. Meanwhile, structurally unsound buildings may increase and eventually create an environmentally blighted area. This promotes more abandonments since neither homeowners, landlords nor tenants are willing to commit resources to a neighborhood of decaying, boarded-up buildings. While the administrative appeal system preserves the due process rights of property owners and is, therefore, consistent with traditional concepts of property, bureaucratic procedures may be abused

so as to delay a necessary condemnation. Shortening the time limit for a good faith compliance with building code provisions coupled with a more efficient appeal system would probably remove such abuses while maintaining the sound reasons for a requirement of exhaustion of other legal remedies.

Another abuse of the local administrative process frequently arises from the valuation of condemned buildings on the basis of the fair market value of surrounding structures in sound condition. This practice inflates the cost of acquisition by the municipality and offers an incentive for timely abandonment by low-end property speculators.²² To cure this defect and discourage the improper use of the appeals process by owners of marginal property, fines for violation of building codes should progress stiffly, or, alternatively, structure valuation should diminish rapidly, as the low-end property approaches the stage of condemnation. This would encourage an earlier release of decaying structures and remove low-end speculation as a disruptive effect in the model and in the marketplace, but would preserve maximum building utility. Before the building seriously violated code standards, occupancy would continue and utility would be maintained. As the building approached condemnation, losing utility, the fine or property valuation system would be structured so that the penalty for retention would increase. However, the crossover point of utility-release would be adjustable by variances in the penalty-release incentive system as housing supply, demand, or even administrative abuses dictated. For example, a code violation penalty of \$10/month on housing units of \$1000 initial valuation could be increased if better housing units were built in the city. This would remove low-end marginal housing while maintaining the desired supply-demand relationship. Conversely, a reduction in the penalty would cause a later release of property, thereby stretching low-end utility.

Viewed more broadly, urban renewal programs which designate entire neighborhoods for slum clearance speed the process of disintegration in salvageable buildings by an "announcement effect" on property maintenance throughout the area.²³ This effect occurs whenever a neighborhood is designated as an urban renewal area. Property owners allow the deterioration of their structures without even minimal repairs because they realize that the city, by adopting an urban renewal plan, has made a commitment to purchase their property at fair market value with little regard for the amenities of a particular property's maintenance.²⁴ This "announcement effect" of urban renewal can be countered by an improved system of prop-

erty valuation, as noted above, in concert with a comprehensive urban and regional plan. This plan, based on the recognition of the dynamic flow of housing development through predictable patterns or stages, would involve a homesteading-like process which would come into play when housing reached the final stage, that of non-utility. At that point, the property must be either demolished or rehabilitated. Ideally, the regional plan would map and project the flow of individual neighborhoods or particular housing units. Such a comprehensive plan has been researched in New Haven for inner city housing and supports the surprising regularity of trickle-down stage development.²⁵ By adoption of a broad plan of long-range urban renewal based upon this predictable stage process, neighborhoods which desire to retain their ethnic, cultural or political character within existing housing structures would be afforded the alternative of a homesteading program under the urban renewal plan. Thus, instead of simply demolishing entire neighborhoods after a rapid "announcement effect" deterioration, the urban renewal program would encourage renovation, through the homesteading process, of preselected units which would provide a stable base for the rejuvenation of the "renewed" area.

In addition to the "announcement effect" of urban renewal, the program has suffered from a mixed reception by the citizenry. Specifically, local citizens and politicians recognize that federal programs to demolish city blocks and clear "slums" also eradicate old neighborhoods, shuffle constituencies and break down newly acquired political power in traditionally disenfranchised minorities. Accordingly, large scale urban renewal programs which involve demolition of neighborhood tenements and extensive family relocations are not always favorably received by local citizens. Statutory safeguards providing for administrative hearings on the advisability of implementing these urban renewal plans are frequently employed to register neighborhood opposition, but opponents have also used the judicial and political approaches.

By statute,²⁶ a public hearing must be held before land can be acquired by an exercise of eminent domain powers. This type of acquisition is ordinarily used where the city intends to demolish large areas pursuant to its urban renewal plan. Although the purpose of the hearing is to discover reasons for and against the implementation of the renewal plan, the Secretary of HUD, the department responsible for conducting the hearing, is afforded broad discretionary powers to weigh the testimony provided. Further, assum-

ing that the procedural requirements of the hearing are met, the decision to go ahead with the urban renewal plan is difficult to challenge successfully in court. In reviewing such administrative decisions, the judiciary gives considerable weight to the Secretary's evaluation of the complexities of fact and policy which entered into the decision. Thus, in an urban renewal challenge, the plaintiff is effectively limited to showing that the exercise of the power of eminent domain is not for a public purpose or that the exercise is designed solely to deny constitutional rights.

In *Berman v. Parker*,²⁷ the Supreme Court of the United States sanctioned this broad sweep of eminent domain powers pursuant to an urban renewal plan. In that case, plaintiff owned a department store which was not itself slum property, but was located in an urban renewal area. In upholding the Redevelopment Authority's right to take the property, the court struck down both the public purpose and constitutional arguments saying:

We do not sit to determine whether a particular housing project is or is not desirable . . . Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them.²⁸

In reality, the political system offers a potentially effective alternative for citizens who desire to register their opposition to an urban renewal plan affecting their neighborhood. Even though an urban renewal plan involves federal funding, the plan is developed and administered according to local standards. Thus, the power of the electorate at the ballot box can be realistically expected to force urban renewal officials to consider fully the needs of local neighborhoods.

A favorable acceptance of urban renewal programs is vital to the success of homesteading. Essentially, homesteading is an urban rehabilitative approach aimed at the types of neighborhoods wherein urban renewal programs have been historically implemented. Consistent with the goals of the overall renewal plan, homesteading attempts to combat abandonment by preserving the stability of local neighborhoods. However, viable rehabilitated neighborhoods can be developed and preserved only where unsalvageable end-stage housing is effectively demolished and removed, a process which requires smooth running administrative machinery and a favorable local reception.

To improve the total existing system, some commentators have advocated the adoption of a comprehensive housing maintenance

code and the consolidation of the various municipal departments which evaluate urban housing.²⁹ This would coordinate intracity and intergovernmental standards of housing and demolition. Further, eminent domain, tax foreclosure and property valuation must be revamped to speed the mechanics of marginal building removal and to remove the incentive in maintaining property without repair.³⁰ In sum, under either model of urban dynamics, a comprehensive, efficient urban renewal plan can be formulated to integrate demolition and homesteading in scheduling specific neighborhoods for redevelopment. As an alternative, retention of the present system hampers urban rehabilitative homesteading by incurring adverse local reaction, which aggravates the build-up of abandoned housing and eventually forces the indiscriminate demolition of entire city blocks.

B. *Code Enforcement*

Since their introduction as health and safety measures in New York at the turn of the century, building codes have been a marginally effective approach to neighborhood housing quality control. In 1965, this approach gained additional impetus when Congress added Section 117 to the Housing Act of 1949.³¹ Under Section 117, municipalities may obtain federal grants covering up to three-fourths of the cost of planning and administering concentrated code enforcement programs in deteriorating but basically sound local areas.³² Designed to assist local communities to restore stability to neighborhoods, the program funds neighborhood public improvements such as streets, sidewalks, curbs, street lighting and tree planting, plus the administration of building code compliance. While funding of these public improvements is beneficial to overall urban rehabilitation, curing the present inefficiency of building code enforcement itself would have a more immediate and beneficial impact on the quality of the urban environment.

Administratively, the development of housing codes as health and safety measures resulted in diffusion of their enforcement power to compartmentalized, understaffed municipal agencies.³³ These agencies inspect and record code violations within their own particular area of development on the sound theory that specialization of departments fosters expertise. For example, the fire department may inspect for fire hazards, the building inspector for structural hazards, and the health department for health and sanitary dangers. Until recently, most cities had no comprehensive municipal housing code, but even with the adoption of a comprehensive code, munici-

palities chose to retain enforcement diffused through various municipal departments. This has caused confusion, administrative delay and uneven code enforcement. Consolidation of the various code inspections, evaluations and enforcement under a single municipal agency would correct these problems. Additionally, such a municipal housing agency should be empowered to draft code provisions concomitant with the peculiar development pattern of the city and to provide equitable and stringent enforcement. Consolidation of code enforcement under one agency would also remove the labyrinth of administrative appeals which currently allows violators of several code areas to engage in marginal compliance.

Although the present system of uneven code enforcement may breed landlord resentment because of the complexities involved and may result in possible economic advantage to violators,³⁴ homesteaders should realize that there are natural limitations to any code system. Essentially, a code system provides only for inspection for health and safety standards rather than for maintenance and rehabilitation. Thus, the program is limited to slowing rather than reversing the stages of housing decay and cannot by itself curtail blight, clear slums or solve the abandonment problem. However, even with this limitation, strict code enforcement in conjunction with rehabilitation programs can maintain better quality housing in salvageable neighborhoods. Thus, where a neighborhood has been designated for urban renewal or rehabilitation, the general quality of salvageable property will be increased if proper inspection is carried out and the material provisions of the code are effectively enforced.

C. *Public Financing*

Existing federal legislation designed to finance private urban rehabilitation uses four approaches: direct rehabilitation grants and loans;³⁵ mortgages for low income developments including rehabilitation;³⁶ mortgage guarantees to home owners and builders;³⁷ and tax incentives.³⁸ Current Congressional efforts³⁹ seek to expand these financial approaches, and to encourage the rehabilitation of existing housing stock by individual families. Clearly, infusion of capital into the inner cities under these federal proposals significantly affects existing rehabilitation projects including homesteading. Therefore, the efficiency of these financing programs and the degree to which they are retained and supported by subsequent enactments are significant.

1. *Direct Rehabilitative Grants and Loans.* To abate the deterioration of houses in an urban renewal or concentrated code enforcement area, Congress enacted Section 115 of the Housing Act of 1965 which establishes a program whereby the federal government grants up to \$3,500 to families whose annual income does not exceed \$3,000.⁴⁰ These grants must be used for repairs and improvements necessary to correct incipient code violations or to maintain the existing structure in compliance with code standards. Although this program directs funds to a critical stage of urban housing deterioration, the program's effectiveness has been tightly constrained by its application to a narrow income and rehabilitation class. However, where the cost of rehabilitation exceeds \$3,500, or the family's income is in excess of \$3,000 the owner/occupant is eligible under Section 312 of the Housing Act of 1964 for a rehabilitation loan up to \$12,000 at 3% for a period of 20 years or three-fourths of the economic life of the property, whichever is less.⁴¹

By August 31, 1970, there were more than \$97,000,000 in mortgages outstanding covering over 25,000 dwelling units which had been financed under the 312 program.⁴² This suggests that broad financial approaches to support homesteading, even in deteriorating neighborhoods, will succeed if they are consistent with the general purposes of urban rehabilitative programs: halting deterioration by reducing the intensity of land use; removing non-complying structures; and encouraging investment in homeownership.⁴³ This consistency of purposes which apparently accounts for the unique success of these programs, is evident from the process of implementation of the program. Allocation of funds under the program requires an initial determination by the agency responsible for implementation⁴⁴ that the building is structurally sound and salvageable by an infusion of reasonable amounts of labor and capital. This thins out deteriorating structures and reduces land use intensity in marginal neighborhoods since rejected buildings will remain subject to code violations and eventually will be demolished. By measuring repairs and improvements against existing code standards, noncomplying structures are eliminated either by conversion through program improvements or by demolition. Finally, the program contains critical provisions which enable the homeowner to refinance total indebtedness at a lower interest rate. In essence, the homeowner may, under limited conditions, consolidate the low interest rehabilitative loan with his outstanding mortgages on the structure so that his total monthly payment does not exceed 20% of his average monthly income.⁴⁵ This avoids the burden that a separate rehabilitative loan

would normally add to monthly cash flows for housing payments and thus provides a boost to low income families anxious to maintain a secure investment in homeownership. Significantly, approximately one-third of the total funding under the 312 program has involved such refinancing.

While conceding the merits of direct cash subsidies, Congress is currently debating the form which future housing programs will take. Essentially, the Nixon Administration has advocated a revenue-sharing approach to community development which would turn over federal funds to communities with no strings attached, and would replace all subsidized federal housing programs with limited direct cash payments to the poor.⁴⁶ This would be a consistent and practical extension of existing programs insofar as it encourages individual rehabilitation of existing housing stock to alleviate urban blight. However, the Senate recently sent to the House a massive housing bill which consolidates and continues most major community development programs but also increases funding for existing loan programs.⁴⁷

Economists and law professors have joined this debate over the more efficient method of funding urban rehabilitation. They have narrowed the issue to whether a separate benefit flows from retention of the urban renewal program.⁴⁸ Such a separate benefit would be necessary to economically justify the continued existence of the program in view of the axiom that a direct subsidy is always cheaper than a subsidy in kind. For homesteaders, retention of funding for demolition, code enforcement and financing programs is vital, but could be more efficiently administered by local agencies. Thus, elimination of existing federal programs will be beneficial only if local governments are willing to implement these programs, presumably with revenue-sharing funds. The administration's proposal for a direct cash subsidy to the poor will affect the homesteader only if he himself is poor. Yet this provision may have a significant beneficial impact on homesteading since a poor family receiving a direct subsidy, instead of an apartment in a public housing project, would be able to spend the subsidy to rehabilitate a homestead parcel, thereby increasing the poor family's equity and commitment to the neighborhood. Further, homestead parcels are generally located in the impoverished sections of the city. Therefore, it is reasonable to expect that the market for homesteading would be greatly expanded if the poor residents were given access to the market by a direct cash subsidy. In sum, a timely resolution of this debate is crucial for urban rehabilitation because these existing programs and Congres-

sional proposals form an important source of financing for the individual homesteader and for beleaguered municipalities inaugurating homesteading legislation.

2. *Low Income Mortgages and Mortgage Guarantees.* The primary purpose of the home ownership program for low income families established by Section 235 of the Housing and Urban Development Act of 1968⁴⁹ is to provide a decent home and a suitable living environment for those families whose income level has traditionally excluded them from real property ownership.⁵⁰ Accordingly, the 235 program facilitates the acquisition of new or rehabilitated housing by providing a direct subsidy which varies with family income and reduces the cost of mortgage interest and insurance. For example, a family buying a \$20,000 house on a \$6,500 annual adjusted gross income would make monthly payments of \$93 and receive a subsidy in the same amount. Families with higher incomes buying the same house would receive a diminished subsidy, while those with lower incomes would be more heavily subsidized if other expenses remain constant.

Since this program resembles the direct grant and loan programs, it should have been equally successful. However, administration of the 235 program was delegated to the Federal Housing Administration, thus merging into the FHA's traditional insurance writing approach a series of social goals stemming from the commitment of high-risk loans and housing subsidies to declining city neighborhoods. In retrospect, this marriage of the FHA and the 235 program has not been wise for several reasons.

In applying the program, the FHA bureaucracy has been largely uncommitted to the social objectives of 235 legislation.⁵¹ This has resulted in a general inadequacy of urban housing appraisals and a lack of commitment to the low income borrower himself.⁵² Moreover, administrative unresponsiveness contributes to the abandonment process when purchasers realize that they have been sold an improperly inspected, dilapidated house and that there is little money available from the family budget to make needed repairs, since under the program mortgage payments are geared to a maximum in proportion to income. Thus, the buyer is forced to remain in the house until it is absolutely uninhabitable or until he is forced out by mounting penalties stemming from local code violations.⁵³ Despite isolated scandals under the program,⁵⁴ these pressures on the individual homeowner went unnoticed initially, but their snowball effect was overwhelming: in Detroit, under the 235 program, HUD

repossessed 5,200 houses; in Philadelphia there were over 4,000 foreclosures.⁵⁵ Embarrassingly, in a number of cities, HUD is now the largest owner of single family houses,⁵⁶ none of which comply with even the most liberal housing codes, although they do provide a potential source for homestead property.

Similarly, mortgage guarantees for moderate income urban homeowners⁵⁷ have suffered from the FHA's self-image as a quasi-lending institution, unwilling to adjust its administration of loans and guarantees to inner city rehabilitators, rather than as a public service agency.⁵⁸ The Congressional Committee on Banking and Currency has criticized the agency for "excessive redtape, extensive delays in processing applications, inordinately cumbersome and complicated procedural requirements." The Committee strongly urged that the Department "... enable potential beneficiaries to adapt programs more specifically to their individual needs."⁵⁹ Congressional disenchantment with the FHA's implementation of urban redevelopment programs is expressed in pending legislation to reorganize and consolidate the 235 program,⁶⁰ but Congress has not yet settled the central question of which federal agency will administer the program if it is retained.

As demonstrated by the relatively successful implementation of urban rehabilitation loans, federal direct subsidies to individual rehabilitators could be effective under existing legislation if the FHA were restructured. If revitalized as a consumer protection agency with expanded prosecution powers consistent with its consumer protection role, the FHA could build into practical administration a concern for implementing the essentially social underpinnings of rehabilitation legislation. The emphasis should shift to guidance and counseling services for the individual borrower in conjunction with local lending institutions. Additionally, rehabilitation property should be screened with state and local urban renewal planners to remove the disruptive influence of low-end speculators from the marketplace.⁶¹ Under revenue-sharing proposals to supplant the FHA entirely,⁶² the same principles are applicable to whatever agency assumes its functions.

3. *Tax Incentives.* Justifiably disillusioned with Section 236 of the National Housing Act⁶³ as a tax incentive program designed to attract private investors into the *construction* of low income housing, Congress added Section 167(k)⁶⁴ to the Tax Reform Act of 1969 to encourage *rehabilitation* of the existing housing stock. Simply stated, 167(k) provides that a taxpayer may elect to compute a

depreciation deduction attributable to rehabilitation expenditures incurred with respect to low income rental housing under the straight line method using a useful life of 60 months and no salvage value.⁶⁵ For the individual homesteader, there is no value in the incentive. Low income rehabilitators lack sufficient income to profit from the depreciation allowance. Middle income investors of time, labor and capital in the rehabilitation project are excluded from claiming the deduction because their property is not low income housing as required by the statute.⁶⁶ Upper income investors recognize the latent complexities of the provision,⁶⁷ including rising incidence of default⁶⁸ and the ultimate dependence of economic feasibility of the investment on obtaining mortgage insurance and interest reduction benefits from HUD.⁶⁹

Tax expenditure analysis provides cogent arguments for replacing the existing tax incentive program with direct governmental assistance, e.g., by direct grant, loan, interest subsidies, guarantees of loan repayment, etc.⁷⁰ None of the asserted virtues of a tax incentive program are applicable to the urban rehabilitation goals of the program. For example, tax incentives no longer encourage the private sector to engage in the social program of building housing for the poor because the rising rate of default has caused the private sector to lose money under the incentive. Another professed virtue is that tax incentives are simple and require less government supervision, thereby promoting private decision making. Yet, this can surely be accomplished by a simple direct subsidy to rehabilitators as visualized under pending Congressional legislation.⁷¹ Further, removal of urban renewal funding from the Internal Revenue Service would encourage administrative simplicity on a local level and provide more accurate measures of the true costs of urban blight. This would encourage municipal governments to be more responsive to the rehabilitative needs of the city and would promote the use of homesteading as a viable local alternative to urban decay.

IV. HOMESTEADING LEGISLATION

Recognizing that urban renewal, code enforcement and rehabilitation finance measures depend upon local application for their success, the federal government has attempted to return the task of providing a decent home for every American⁷² to state and local governments.⁷³ Concomitant with this evolving federal policy, municipalities have become increasingly willing to assume responsibility for the reformation of inner cities and to launch imaginative programs relying on increased citizen participation in the rebuilding

of cities.⁷⁴ Philosophically, homesteading proposals draw on the spirit that settled the West;⁷⁵ realistically, in the wake of existing legislative difficulties, they must meet rigorous standards for successful implementation in halting further deterioration of the city.

Faced with marginally effective federal programs and no restrictive state legislation, on May 18, 1973, Wilmington, Delaware instituted an Urban Homestead Program designed to counter the seige of abandonment and restore the estimated 2,000 abandoned houses in that city to the tax rolls.⁷⁶ Philadelphia soon followed with an ordinance of its own authorizing the Mayor to establish a homestead program.⁷⁷ Most recently, the Boston City Council passed a homesteading ordinance, but the Mayor has refused to implement it, citing intergovernmental legal obstacles and practical difficulties.⁷⁸ This municipal activity provides a basic introduction to the mechanics of homesteading and to the foreseeable pitfalls.

A. *Homesteading Resource Property*

The inner city contains an abundance of abandoned, structurally sound houses, but municipal access to clear title on abandoned property can be hindered by state law impediments, delay in municipal tax lien foreclosures or by HUD's retention of title. As noted above, under existing federal programs, HUD takes title to property financed under mortgage guarantees and later abandoned.⁷⁹ Although federal law provides for the sale of federally held real property to communities implementing an urban renewal program,⁸⁰ which would apparently include homesteading, cities have not yet resorted to this method of acquiring title to specific properties because conventional tax foreclosures and gifts have provided sufficient property for the current scale of the homesteading programs.⁸¹ However, the adoption of more effective demolition, code enforcement, and planning measures in coordination with a successful homesteading program will probably require consolidation of titles to all abandoned buildings within closely defined neighborhoods. For example, where local government adopts open space planning under the homesteading-self contained ring model,⁸² implementation of land use intensity goals and broad gauge environmental plans will require the extensive razing of end-stage housing units, which may transcend normal municipal boundaries to include deteriorated units in some older suburbs. Accordingly, federal, state and municipal governments should establish a workable policy as to whether HUD will transfer title to the states or municipalities or to a regional planning board empowered to allocate salvageable prop-

erty to municipal homestead boards in conformity with the regional development plan. The eventual use of regional planning boards to assume the present duties of the municipal homesteading board seems the best solution because it maintains a local perspective on urban problems but still allows combined municipal areas greater access to federal planning and environmental funds.

To date, state law impediments to homesteading programs have been raised only with regard to proposed tax incentive features of the ordinances and not to municipal handling of property titles. However, it is foreseeable that regional planning for expanded cities may necessitate a pre-emption of municipal titles, especially where federal legislation requires a state or regional plan as a condition of funds for urban renewal projects.⁸³ A state planning board empowered to release title to municipalities in conformity to regional population density goals could have the same beneficial effect as the regional planning board noted above.

A final obstruction of municipal access to clear title of potential homesteading property lies in the administrative delay of foreclosures on municipal tax liens. Although under state law the municipality might have first priority in taking title to satisfy a tax judgment, bureaucratic inefficiency may inordinately delay the foreclosure process. An overhaul of the administrative machinery under guidelines set forth under the demolition and code enforcement sections above would also have beneficial effects in this area by providing resource property for this rehabilitative program.

B. *Mechanics of Homesteading: The Board and its Functions*

To establish a coordinating agency for homesteading activity, a municipal ordinance should authorize the Mayor of each city to appoint a Homestead Board composed of 3-11 members, serving without compensation, who would represent every housing agency, plus members of the general community: contractors, clergymen, bankers, and "two low-income residents of the city."⁸⁴ To administer the Homestead Program, the Board should be broadly empowered to obtain necessary staffing and to "prepare regulations to implement the purpose and spirit of urban homesteading and reclamation."⁸⁵ This would include publicizing the program, screening resource property and applicants, executing deeds of conveyance (conditional and final), seeking financing for improvements, inspecting for code compliance, and authorizing tax abatement.

The Board should also be empowered to utilize the aid and assistance of other relevant city agencies in the furtherance of its duties

and responsibilities. Philadelphia has budgeted \$500,000 for the use of the Board.⁸⁶ Given the responsibilities of the Board and its power to hire staff to implement the actions taken by the Board, it would seem that some sort of salaried administrative position should be set up to coordinate the various functions of the Board. Efficient functioning of the Board is essential to the success of the homestead program, since as has been discussed, administrative inefficiency can have a substantial detrimental effect on urban renewal programs. Therefore, the budget which Philadelphia has allocated for the Homestead Board's use is encouraging as an economic commitment to the program's success. However, the commitment must be more than economic. Recognizing that the homestead proposals are still in the formative stages, they are administratively quite unstructured. Though the purposes of these programs are generally agreed upon, how the Homestead Board will function in the context of the machinery of state and municipal governments has been left unresolved. For the present, the small scale of these programs has prevented the lack of structure from seriously impairing the practical functions, but there are indications that administrative problems may soon arise.⁸⁷ Thus, it is the responsibility of homesteading advocates to redraft the present proposals to define more clearly the administrative process and relationships in which the Board functions.

To evaluate resource property the Board would prepare lists of city owned residential property suitable for rehabilitation. After a municipality acquires clear title to a group of abandoned buildings the Department of Licenses and Inspections,⁸⁸ in conjunction with Departments of Planning and Development⁸⁹ or an ad hoc committee,⁹⁰ would inspect the properties to determine suitable structural candidates for rehabilitation⁹¹ and would mark rejected buildings for demolition. The screened and accepted property would be listed with the municipal Homestead Board which would then consider applications for homestead property from individuals.

Under existing programs individual applicants for homestead property must meet age, citizenship, residence and financial qualifications. Specifically, the applicant must be at least 18 years of age in Boston and Wilmington, although Philadelphia requires that the applicant be 21.⁹² Interestingly, Wilmington also requires the applicant to be the head of the family.⁹³ Citizenship of the United States, or at least a declaration of intention to become such, is required, and Boston requires that an applicant be a bona fide resident of that city and gives preference to neighborhood residents.⁹⁴ The critical evalu-

ation for many applicants is the requirement of proven financial status and/or building trade skills to rehabilitate an existing structure or construct a new dwelling.⁹⁵ This evaluation comports with the philosophy behind homesteading itself and is probably a vital part in these early stages of program development if homesteading is to succeed as a pilot program. Significantly, the same rehabilitative goals can be accomplished in several various methods because the individual applicant is allowed to substitute any skilled individual to fulfill this requirement. For example, if a homesteader secures financing and desires to renovate and reside in an inner city home, he is allowed to contract for the actual rehabilitation. This should provide a beneficial marketplace response by encouraging community contractors to specialize in rehabilitation, which would promote employment in the inner city. Because the widespread publicity on the program has encouraged an overwhelming number of applicants, the actual distribution of homestead parcels has been by lottery,⁹⁶ but ordinances should provide for the homestead board to approve applicants with a view toward compatibility of the parcel assigned to him.⁹⁷ This compatibility should be determined by: (1) the condition of the structure; (2) the personal abilities of the applicant; (3) assets of the applicant; (4) mortgage commitments; and (5) availability of financing.⁹⁸

On completion of the screening process, the actual conveyance of the property from the municipality to the homesteader should be in two stages: conditional and final. Initially, the applicant would receive a conditional deed for a nominal fee and his promise to perform the elements of a contractual obligation with the city.⁹⁹ This contract should require the applicant to rehabilitate or construct on the assigned parcel, permit periodic code inspections of the property and bring the parcel up to code standards within 12-18 months.

Under the Wilmington plan, breach of the homesteaders contract results in a 30 day notice to the homesteader to "surrender and quit the assigned parcel in a condition at least equal to that when first assigned."¹⁰⁰ The city then reclaims the property. This reclamation deters low-end speculation by, for example, the use of strawmen to take parcels of inner city property, since the city can effectively reclaim the property by citing breach of the strawmen's contract. However, it appears to be weak statutory drafting because it ignores the problem of compensation for equity forfeited under a breach by a good faith homesteader. For example, where a homesteader undertakes a \$10,000 rehabilitation job and completes \$8,000 leaving

\$2,000 of the job unfinished within the prescribed time period, the building may well be still violative of code standards and subject to reclamation by the city. Two possible solutions present themselves. The city may enact an amendment to existing ordinances which provides for compensation upon such reclamation. The question to be answered is whether such compensation should be less than or equal to the homesteader's equity. The advantage of a liberal compensation rule is that participation in the program would be encouraged. The disadvantage is that the city would be called upon to insure the homesteader in case of default to the extent of his equity. This could be costly to the program as a whole, since the property would presumably still be sub-code and would be returned to the homesteading pool to be conditionally sold again for \$1. The other alternative is to give 30 day notice to the homesteader to quit the parcel but to provide for an auction within that 30 days for sale of the homestead property. The proceeds, less auction expenses, would go to the original homesteader to enable him to recoup his investment in the property. This second alternative allows the market mechanism to determine the extent of equity that a defaulting homesteader may recover. Of course, the unknown factor here is what kind of market would exist for partially rehabilitated housing. Clearly, this alternative is less of an encouragement to the homesteader, but the fact that it is assumed that property values in a homesteading area will generally be on the rise gives the homesteader some assurance that an auction-sale will return at least a portion of his equity.¹⁰¹

The homesteader should have to agree to live in, occupy and maintain to City Code standards¹⁰² the parcel for a period of 3 to 5 years. At the end of this contractual lease period the property would be conveyed in fee simple to the homesteader. This method of conveyance of title is excellent and guarantees elimination of some prior abuses of inner city housing programs. The requirement of actual residence in the structure for a period of years before title actually vests assures continued maintenance of the property in compliance with building codes and eliminates the rapid deterioration of city housing. Additionally, the human resource commitment to neighborhoods should have positive beneficial effects in eliminating neighborhood blight generally.

Since most of the buildings held by municipalities require an estimated \$10,000 per unit to rehabilitate, even with the homesteader doing much of the work,¹⁰³ and the process of capital disinvestment in inner cities by any type of lending institution is now

firmly established,¹⁰⁴ the major obstacle to rehabilitation is funding the individual homesteader. Accordingly, Homestead Boards have sought to broaden the homesteader's access to financing by inducing local banks to provide mortgage money. However, federal sources such as the rehabilitation loan, mortgage and mortgage guarantee programs still provide the most fertile source of funds. Therefore, it is imperative to insure that these funds are available to homesteaders even though their title is conditionally held. Municipalities should seek an early definite ruling on this point from HUD, but it seems that homesteaders would be in compliance with federal requirements for funds since they are acting under the aegis of a locally authorized plan for urban rehabilitation.¹⁰⁵ Adoption of Congressional proposals for a direct subsidy program, especially if channelled through the existing municipal Homestead Boards, would be advantageous to municipalities because funds would be controlled and disbursed at the local level. Coupled with effective use of demolition and code enforcement funds, a municipal urban renewal plan could then be more successfully implemented, revitalizing homestead neighborhoods. This would raise local property values which would, in the long run, induce private capital investment by conventional lenders without federal guarantees, thereby providing a reduction in federal resource allocation to the inner city.

Provided that the Homestead Board finds suitable financing and a homesteader for its housing parcel, a conditional deed or lease would be granted to the individual, and he would begin to restore the property. This conditional deed arrangement should provide for regular on-site inspection for code compliance by an agency responsible to the Homestead Board, but should also allow specific short-term exemptions consistent with the overall rehabilitation of the housing parcel. This continuous inspection process would allow the Homestead Board to render technical assistance in analyzing the work to be done and legal and financial advice on preparing specifications, cost estimates and contracts for tasks beyond the individual rehabilitator's expertise. The inspection process would correct a major defect in prior federal programs: abandonment of housing equity by erstwhile rehabilitators. By advising the homesteader as to real labor, material and finance costs of the project, the Homestead Board and its staff would effectively assume the social role recommended above for the FHA, albeit in a much more limited application. Here, again, it is imperative that the Homestead Board be adequately funded to perform this function. A properly funded board will be able to provide a field test of the feasibility of propos-

als for FHA improvement. It is predictable that a local commitment to urban rehabilitation will correct the FHA's tolerance of low-end speculation and slipshod finance counselling. Thus, rehabilitators will preserve their individual equities in housing, a fact which will remove the snowball effect of massive federal mortgage defaults, and bolster equity insurance to the city, the lender and guarantor.

The final element of current homesteading ordinances is a tax abatement clause which provides the homestead parcel with a property tax exemption for a specified period of at least 5 years. In Wilmington, homesteaders will be able to deduct one-half the value of any capital improvement to the property from the original tax assessment for a period of five years.¹⁰⁶ In Boston, a complete exemption was proposed.¹⁰⁷

Unlike an income tax incentive which depends for its value on the income of the taxpayer and, hence, may have little real value to the homesteader, an exemption from property tax always has the exact value of the tax since these funds are retained by the rehabilitator, regardless of his income level. Thus, this feature would always be more efficient and favorable to the individual than current federal programs such as 167(k). Further, tax abatement strikes a chord of fair play when one realizes that the city has depended on the individual homesteader himself to supply labor and capital to improve property which everyone else in the city had abandoned entirely and which was draining municipal resources. Thus, the city should be willing to forego reaping the double benefits of this turnaround, especially since the homesteader's capital improvements will raise the property valuation base and thus raise future taxes levied. Accordingly, the Boston proposal for a full exemption is better. Further, this provision for tax abatement should be expanded to include carryover provisions for the five year term of required residence. This would encourage homesteaders to make their expenditures earlier in the rehabilitative process rather than stretching them out over 2 years or more to take full advantage of the abatement.

Despite these economic and equitable arguments, the tax abatement program may be thwarted by individual state laws. For example, the statutes of the Commonwealth of Massachusetts¹⁰⁸ do not allow the City of Boston to grant a tax exemption to private persons, although the state laws of Delaware and Pennsylvania contain no such restriction. Although this obstacle may be circumvented by the establishment of a charitable corporation to hold legal title during the tax abatement term, it seems more consistent with the philosophy of the homesteading proposals to amend state law as needed.

V. CONCLUSION

As this article indicates, homesteading legislation can be an effective, viable tool in the eradication of urban blight only if it comports with the reality of urban dynamics and rides the crest of federal legislation. In relating homesteading to patterns of urban growth, it is important to implement homesteading in conjunction with an overall urban renewal plan. Such a plan would be best drafted in conformity to the self-contained ring model because of the current demographic trends which have led to present inner-city population decreases. Thus, it is imperative for municipalities to surrender some of their political power to either a state or regional planning board capable of maintaining a local perspective on the problem vis-a-vis the federal bureaucracy, but also empowered to implement broad gauge environmental planning. This necessarily cuts across traditional city boundaries and will require the surrender of some political power by municipalities. In view of cities' experience with higher government, especially with regard to urban rehabilitation, this suggestion will not be well received. However, it seems to be the only realistic alternative if homesteading is to have a long range environmental impact.

The existing federal programs to rehabilitate urban centers are clearly a collective disaster. Billions of dollars have been spent without significantly altering the quality of life. While it is undoubtedly true that the condition of cities would have been much worse without these expenditures, it is equally valid that the expenditures have been shockingly inefficient. More money probably goes into the administration of the programs than into the substance of renewal. Clearly, this process could be pared by an allocation of funds directly to local government and to the poor through revenue-sharing and direct cash subsidies. This assumes that local government is more efficient with funds because it is more responsible to a smaller electorate. This assumption is probably valid now, and will be strengthened as the human resource base expands with the success of urban rehabilitation. Direct cash subsidies to the poor would undoubtedly be beneficial in giving the low income segment of our society a real commitment to a healthy society.

Urban homesteading ordinances are sufficiently drafted as a pilot program. However, they must be closely reexamined in light of the suggestions made above to insure that foreseeable pitfalls are avoided once the program spreads beyond its current low level of implementation. In particular, nothing is more vital to their success than a central planner/manager on the Board with the authority to

operate a staff of proper size and with sufficient expertise. Yet ordinances now provide for the staff to report to an amorphous Board rather than a central manager. This structure may in the long run prove fatal to a program which depends for its success on the ability of the Board to cut across political lines, implement an effective demolition program, revamp the present toothless system of fines for code enforcement and convince bankers to invest in condemned property. However, homesteading has a bright future if politicians and planners recognize the strengths of the proposals and minimize its weaknesses.

FOOTNOTES

*Staff Member, ENVIRONMENTAL AFFAIRS.

¹U.S. Bureau of the Census, Dep't of Commerce, STATISTICAL ABSTRACT OF THE UNITED STATES 143-67, 431-2 (1973). In 1973, social welfare spending at all levels of government exceeded \$1,000 per capita. WALL STREET JOURNAL, March 12, 1974, at 12, col. 4.

²Greco, M.S. *The Clean Air Amendments of 1970: Better Automotive Ideas from Congress*, 1 ENVIRONMENTAL AFFAIRS 384, 385 (1971).

³The outflow of population from the central cities is an indication that many people no longer desire to pay the costs of city life. STATISTICAL ABSTRACT OF THE UNITED STATES, *supra* n. 1, at 4. See also Birch, D., *The Economic Future of City and Suburb*, CED Supplementary Paper Number 30, at 16-25, (Urban Studies Series, Committee for Economic Development, 1970).

⁴Grad, *The City is Here to Stay*, 1973 URBAN LAW ANNUAL 3, 24-27 (1973).

⁵TIME, Aug. 9, 1973 at 6.

⁶On November 26, 1973, the Boston City Council passed an ordinance establishing the Boston Urban Homestead Program. The foregoing, having been presented to the Mayor on the 30th day of November, 1973, and within fifteen days after such presentation having been neither signed by him nor returned by him with his objections thereto in writing, is in force under St. 1948, c. 452, § 17D as appearing in St. 1951, c. 376, § 1. After the 15 days had elapsed and the ordinance became effective, Mayor White of Boston did return the ordinance with his objections thereto in writing. See letter from Mayor Kevin White to Mr. Patrick F. McDonough, President, Boston City Council, December 17, 1973.

⁷The Mayor-City Council dispute, *supra* n. 6, brought advice from the Corporation Council, City of Boston Law Department, that the

homestead program cannot legally go forward under the Boston ordinance. Letter from Thomas H. Martin, Assistant Corporation Counsel City of Boston to the author, January 3, 1974 (on file at ENVIRONMENTAL AFFAIRS Office). Mayor White has directed his staff to devise a program which will address the problems currently embodied in the Boston ordinance but does not intend to implement the plan in its present form. Letter from Kevin H. White, Mayor, City of Boston, to the author, January 14, 1974 (on file at ENVIRONMENTAL AFFAIRS Office).

⁸Four months after enactment of the homestead ordinance, another ordinance was approved by the Mayor of Philadelphia amending Title 16 of the Philadelphia Code relating to public property by adding a new chapter providing for the appointment of a Vacant Property Review Committee to supplement the functions of the Urban Homestead Board. Philadelphia, Penn., Ordinance No. 909-A, December 14, 1973.

⁹The major difficulty with the Boston ordinance is the exemption-from-taxation feature which, in the opinion of the Law Department, City of Boston, conflicts with MASS. GEN. LAWS ANN ch. 59 §5. Letter from Thomas H. Martin, *supra* n. 7.

¹⁰Birch, *Toward a Stage Theory of Urban Growth*, 37 JOURNAL OF THE AMERICAN INSTITUTE OF PLANNERS at 79-80, (March, 1971).

¹¹*Id.* See generally, Hoover, E., and R. Vernon, ANATOMY OF A METROPOLIS, 190-207 (Harvard University Press, 1959).

¹²*Id.* at 83. See also Birch *et al.*, *Patterns of Urban Change: The New Haven Experience*, (unpublished manuscript) (October 1973).

¹³*Id.*

¹⁴Grad, *supra* n. 4 at 6-7.

¹⁵See generally, NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT, at 467-82 (1968).

¹⁶See generally, Forrester, J., URBAN DYNAMICS (Cambridge, Mass.: The MIT Press, 1969). These models are supported theoretically by others. See, e.g., Raskin E., SEQUEL TO CITIES (1969). However, Birch demands more empiricism of his models. See Birch, *supra* n. 10 at 79.

¹⁷Grad, *supra* n. 4 at 25-7.

¹⁸In January, 1973, President Nixon ordered an 18 month freeze on further expenditures of housing funds. In his budget message to Congress on January 29, 1973, the President explained this action: ". . . [f]ederally assisted housing programs have been plagued with problems and their intended beneficiaries have been short-changed. As a result, new commitments under these programs

which have not worked well enough have been temporarily halted, pending a complete reevaluation of the federal role in housing" 119 CONG. REC. H513, H518 (daily ed. Jan. 29, 1973). See also, Schroeder, *Land-Use Planning for Assisted Housing—The President Signals Retreat*, 1971 LAW AND THE SOCIAL ORDER 451 (1971).

¹⁹Housing and Urban Development Act of 1965, 42 U.S.C.A. §1467 (1969).

²⁰42 U.S.C.A. §1467 (1969).

²¹Mandelker, *Housing Codes, Building Demolition, and Just Compensation: A Rationale for the Exercise of Public Powers over Slum Housing*, 67 MICH. L. REV. 635, 639-54 (1960). See also, Nachbaur, *Empty Houses: Abandoned Residential Buildings in the Inner City*, 17 HOW. L. J. 3, 46 (1971).

²²*Id.* at 659. See generally, Sternlieb, G., *THE TENEMENT LANDLORD* (1966).

²³Nachbaur, *Empty Houses: Abandoned Residential Buildings in the Inner City*, 17 HOW. L. J. 3, 35 (1971).

²⁴*Id.* at 34-9.

²⁵Birch, et. al., *Patterns of Urban Change: The New Haven Experience* (unpublished manuscript) (October, 1973).

²⁶Housing Act of 1949, 42 U.S.C.A. §1455(d), (1969).

²⁷*Berman v. Parker*, 348 U.S. 26 (1954).

²⁸*Id.* at 33.

²⁹*Enforcement of Municipal Housing Codes*, 78 HARV. L. REV. 801 803-04, 810 (1965).

³⁰Mandelker, *supra* n. 21, at 665-72.

³¹Housing and Urban Development Act of 1965, 42 U.S.C.A. §1468 (1969).

³²42 U.S.C.A. §1468 (1969).

³³*Enforcement of Municipal Housing Codes*, 78 Harv. L. Rev. 801, 804 (1965).

³⁴*Id.* at 811.

³⁵See 42 U.S.C.A. §§1452, 1466, 1468a.

³⁶See 12 U.S.C.A. §§1715l, 1715z. (1969).

³⁷12 U.S.C.A. §§1709, 1715l, (1969).

³⁸Int. Rev. Code of 1954 §167(k) (1969).

³⁹See text of S. 3066 passed by the Senate on March 11, 1974, 120 CONG. REC. S3379-3423 (daily ed. March 11, 1974).

⁴⁰42 U.S.C.A. §1466(c) (1969).

⁴¹42 U.S.C.A. §§1452, 1452b (1969).

⁴²Edson, *Housing Abandonment—The Problem and a Proposed*

Solution, 7 REAL PROPERTY, PROBATE AND TRUST JOURNAL 382, 385 (1972).

⁴³*Enforcement of Municipal Housing Codes*, 78 HARV. L. REV. 801, 803 (1965). See also Comment, *Conservation and Rehabilitation of Housing: An Idea Approaches Adolescence* 63 MICH. L. REV. 892, 894 (1965).

⁴⁴The policy of the United States is to vest in local public housing agencies the maximum amount of responsibility. 42 U.S.C.A. §1401 (1969). The Secretary of HUD is authorized to delegate the power of determination to any federal or local public or private agency or organization. 42 U.S.C.A. §1452b (f) (1969).

⁴⁵42 U.S.C.A. §1452b(c)(4)(A) (1969).

⁴⁶“(D)irect cash assistance . . . would give the poor the freedom and responsibility to make their own choices about housing—and it would eventually get the Federal Government out of the housing business . . . of the policy alternatives available, the most promising way to achieve decent housing for all of our families at an acceptable cost appears to be direct cash assistance.” President Nixon’s special message to Congress on Federal Housing Policy. 119 CONG. REC. H 8070, H 8072 (daily ed. Sept. 19, 1973).

⁴⁷WALL STREET JOURNAL, March 12, 1974 Sec. 1 at 3, Col. 1.

⁴⁸Komesar, *Return to Slumville: A Critique of the Ackerman Analysis of Housing Code Enforcement and the Poor*, 82 YALE L.J. 1175, 1175-7 (1973).

⁴⁹Housing and Urban Development Act of 1968 (codified in scattered sections of Titles 12 and 42 U.S.C.A.; see e.g., 12 U.S.C.A. §§1701, 1715z-1) (1969).

⁵⁰12 U.S.C.A. §1701t (1969).

⁵¹Note, *Abuses in Low Income Homeownership Programs—The Need for a Consumer Protection Response*, 45 TEMP. L.Q. 461, 469-70 (1972).

⁵²*Id.* at 470, 472.

⁵³*Id.* at 471.

⁵⁴*Id.* at 463. See generally, House Committee on Banking and Currency, *Investigations and Hearings of Abuses in Federal Low- and Moderate-Income Housing Programs*, at 3, Staff Report and Recommendations, 91st Congress, 2nd Sess. (1970).

⁵⁵Stegman, *Low-Income Ownership: Exploitation and Opportunity*, 50 JOURNAL OF URBAN LAW 371, 375-6. (1973).

⁵⁶*Id.* at 375.

⁵⁷12 U.S.C.A. §§1709, 1715l (1969).

⁵⁸Note, *Abuses in Low Income Homeownership Programs—The*

Need for a Consumer Protection Response 45 TEMP. L.Q. 461, 466, 469 (1972).

⁵⁹1968 UNITED STATES CODE CONGRESSIONAL AND ADMINISTRATIVE NEWS 2876.

⁶⁰S. 3066, 93rd Cong., 2nd Sess. (1974) See remarks of Senator Sparkman in explanation of the bill's attempted compromise of the Administration and Congressional positions. 120 CONG. REC. S 3199-3204. (daily ed. March 8, 1974).

⁶¹Nachbaur, *supra* n. 23 at 23. *Abuses, supra* n. 51 at 470-2.

⁶²See generally, the Administration's position as expressed in President Nixon's message to Congress on September 19, 1973. 119 CONG. REC. H 8070 (daily ed. Sept. 19, 1973).

⁶³12 U.S.C.A. §1715z-1 (1969).

⁶⁴INT. REV. CODE of 1954 §167(k) (1969).

⁶⁵*Id.* §167(k).

⁶⁶To be eligible for the section's fast write-off, expenditures must be for rehabilitation of low income rental housing. INT. REV. CODE of 1954 §167(k)(1) (1969).

⁶⁷Meir, *Tax Shelters and Real Estate: The Rehabilitation of Low Income Housing*, 7 SUFF. L. REV. 1, 45 (1972).

⁶⁸*Id.* at 38-42.

⁶⁹*Id.* at 46.

⁷⁰Surrey, *Tax Incentives as A Device for Implementing Government Policy: A Comparison with Direct Expenditures*, 83 HARV. L. REV. 713 (1970). See also, Note, *The Value of Tax Incentives as a Means of Encouraging the Rehabilitation of Low Income Housing*, 41 U. CIN. L. REV. 151 (1972).

⁷¹This is the position adopted by the Nixon Administration. 119 CONG. REC. H. 8070 (daily ed. Sept. 19, 1973).

⁷²42 U.S.C.A. §1441 (1969).

⁷³WALL STREET JOURNAL, March 12, 1974, at 3 col. 1.

⁷⁴The drafting of S. 3066 reflects recognition of the ability of local communities to "act swiftly and imaginatively to deal with local problems" of housing and community development. 120 CONG. REC. S 3423 (daily ed. March 8, 1973) (Remarks of Senator Stevenson).

⁷⁵Much of the literature which discusses urban homesteading draws the comparison to the 1862 Federal Homestead Act. See, e.g., TIME, August 9, 1973 at 6. See also the statement of Councilman Coleman, sponsor of the ordinance in Philadelphia. J. Coleman, Esq., *Urban Homesteading, A Plan for Developing our New Frontiers* (limited publication, undated, on file at ENVIRONMENTAL AFFAIRS Office).

⁷⁶WILMINGTON, DEL. CODE ch. 33A Preamble (1973).

⁷⁷Philadelphia, Penn. Ordinance No. 543, July 20, 1973.

⁷⁸The ordinance became law because the Mayor did not submit a timely veto. However, the Mayor has refused to implement the program citing funding problems and conflict of the exemption-from-taxation feature with state legislation. Letter from Mayor White to the author, *supra* n. 7.

⁷⁹12 U.S.C.A. §§1710, 1715u (1969).

⁸⁰42 U.S.C.A. §1458 (1969).

⁸¹TIME, Aug. 9, 1973 at 6. Letter from Mayor White to the author, *supra* n. 7.

⁸²See text at n. 16.

⁸³See, e.g., 42 U.S.C.A. §1451(c) (Supp. 73).

⁸⁴Boston, Mass., Ordinances of 1973 ch. 13 §7 (1973).

⁸⁵Philadelphia, Penn., Ordinance No. 543, §5 July 20, 1973.

⁸⁶Philadelphia, Penn., Ordinance No. 543, §8 July 20, 1973.

⁸⁷The present popularity of these homesteading programs indicates that they will expand rapidly. See text at n. 96.

⁸⁸WILMINGTON, DEL., CODE ch. 33A §2 (1973).

⁸⁹WILMINGTON, DEL., CODE ch. 33A §2 (1973).

⁹⁰Philadelphia provides for the Board to be responsible for this determination of whether vacant structures are appropriate for inclusion in homestead programs, but also provides that this shall be done in conjunction with other relevant city agencies. This may well lead to an ad hoc committee on parcel evaluation. Philadelphia, Penn., Ordinance No. 543, §6 July 20, 1973.

⁹¹WILMINGTON, DEL., CODE ch. 33A §2 (1973).

⁹²Philadelphia, Penn., Ordinance No. 543, §6 July 20, 1973.

⁹³WILMINGTON, DEL., CODE ch. 33A §4 (1973).

⁹⁴Boston, Mass., Ordinances of 1973 ch. 13 §7 (1973).

⁹⁵WILMINGTON, DEL., CODE ch. 33A §4 (1973).

⁹⁶Wilmington received over 100 applications for its initial offering of 10 houses. N.Y. TIMES, Sept. 16, 1973 at 34, col. 5.

⁹⁷WILMINGTON, DEL., CODE ch. 33A §11 (1973).

⁹⁸Boston, Mass., Ordinances of 1973 ch. 13 §3 (1973).

⁹⁹Philadelphia specifies that \$1 be paid in consideration for the right to participate in the program. Philadelphia, Penn., Ordinance No. 543, §6 July 20, 1973.

¹⁰⁰WILMINGTON, DEL., CODE ch. 33A §4 (1973).

¹⁰¹N.Y. TIMES, Sept. 16, 1973 at 34, col. 5.

¹⁰²WILMINGTON, DEL., CODE ch. 33A §4 (1973).

¹⁰³Letter from Mayor Kevin H. White to the author, *supra* n. 7.

¹⁰⁴Sternlieb, G. and R. Burchell, **RESIDENTIAL ABANDONMENT, THE TENEMENT LANDLORD REVISITED** 242-49 (1973).

¹⁰⁵*See, e.g.*, 42 U.S.C.A. §1466(A)(2) (1969).

¹⁰⁶Printed Statement of Thomas C. Maloney, Mayor, City of Wilmington, Delaware (undated).

¹⁰⁷Boston, Mass., Ordinances of 1973 ch. 13 §2 (1973).

¹⁰⁸MASS. GEN. LAWS ANN. ch. 59 §5 (1973).